

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Notice of Inquiry Concerning a Review	)	
of the Equal Access and Nondiscrimination	)	CC Docket No. 02-39
Obligations Applicable to	)	
Local Exchange Carriers	)	

**COMMENTS OF SPRINT CORPORATION**

Sprint Corporation ("Sprint"), on behalf of its independent incumbent local exchange and competitive local exchange/long distance operations, respectfully submits its comments in the above-captioned proceeding in response to the Notice of Inquiry ("NOI"), released February 28, 2002 (FCC 02-57).<sup>1</sup> In the NOI, the Commission examines the importance of equal access and nondiscrimination safeguards as applied to the Bell Operating Companies ("BOCs"). The FCC also examines the continued relevance of applying these safeguards to independent incumbent local exchange carriers ("LECs") and imposing such obligations on competitive local exchange carriers ("CLECs"). As both a LEC and a CLEC/IXC, Sprint offers a unique and balanced perspective on the debate over whether such obligations continue to serve a useful purpose.

As set forth more fully below, Sprint supports the continued application of equal access and nondiscrimination obligations, particularly as applied to the BOCs. Such obligations have evolved over time and provide a measure of protection against anti-

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<sup>1</sup> *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, Notice of Inquiry, 2002 FCC Lexis 1027, (rel. Feb. 28, 2002).

competitive sales and marketing behavior and discriminatory access services provisioning, thereby helping to maximize consumer choice.<sup>2</sup> While the same risks are not nearly as problematic with independent incumbent LECs as they are with BOCs, Sprint does not oppose the continued application of such requirements to independent incumbent LECs. Ultimately, the continuation of equal access and nondiscrimination provisions – particularly as applied to BOCs -- provides the greatest benefit to consumers.

#### A. BACKGROUND

The equal access and nondiscrimination obligations are rooted in the principle that competition cannot flourish when carriers have the ability to exercise market power through their control of bottleneck facilities. Stemming from the Modification of Final Judgment, which addressed AT&T's dominance in the telecommunications industry and its relationship with the BOCs, the principles of equal access and nondiscrimination have subsequently been extended to other LECs by the courts and the Commission to promote competition and maximize consumer benefit.<sup>3</sup> In enacting the Telecommunications Act

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<sup>2</sup> Sprint notes that the establishment of special access and UNE performance measurements will also help curb anti-competitive behavior and urges the Commission to quickly resolve those rulemaking proceedings.

<sup>3</sup> See *United States v. American Tel. And Tel.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) ("MFJ") (imposing equal access and nondiscrimination obligations on BOCs); *United States v. GTE Corp.*, 603 F. Supp. 730 (D.D.C. 1984) ("GTE Consent Decree") (extending such obligations to GTE); and *MTS and WATS Market Structure Phase III: Establishment of Physical Connections Through Routes among Carriers; Establishment of Physical Connections by Carriers with Non-carrier Communications Facilities; Planning among Carriers for Provision of Interconnected Services, and in Connection with National Defense and Emergency Communications Services; and Regulations for and in Connection with the Foregoing*, Report and Order, 100 FCC2d 860 (1985) (extending certain obligations to independent incumbent LECs).

of 1996, Congress specifically retained the equal access and nondiscrimination obligations, even as it lifted the two antitrust decrees and took other steps to stimulate competition.<sup>4</sup> As noted in the NOI,<sup>5</sup> the Commission similarly has recognized the important function that such obligations have traditionally provided, and may continue to play, in providing a competitive safeguard against discriminatory conduct by BOCs.<sup>6</sup>

## **B. APPLICATION OF OBLIGATIONS TO BOCS**

Sprint believes that the equal access and nondiscrimination obligations continue to serve an important purpose in curbing a BOC's ability to discriminate among interexchange carriers ("IXCs") in the provision of service. While the Commission has found some evidence of limited competition in certain markets, BOCs unquestionably enjoy overwhelming market power. BOCs control approximately 7/8 of the nation's switched access lines, located across broad and contiguous geographical areas.<sup>7</sup> This market dominance affords substantial opportunity to discriminate among competing IXC providers. Such risk is particularly great in those markets where BOCs have been granted Section 271 authority to offer in-region IXC services. In other contexts, the Commission itself has acknowledged the potential for such anti-competitive behavior and has implemented rules to minimize such opportunity. The equal access and

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<sup>4</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 251(g).

<sup>5</sup> See NOI at ¶¶ 5-6.

<sup>6</sup> See, e.g. *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, as amended, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21939, ¶ 70 (1996) (subsequent history omitted).

<sup>7</sup> Based on USF loops in October 1, 2001 NECA USF Filing, Tab 6.

nondiscrimination provisions provide an important tool in the Commission's arsenal to protect against anti-competitive behavior.

1. *Definition of Equal Access and Nondiscrimination Obligations*

Sprint believes that there is a significant risk involved in attempting to catalog and codify existing equal access obligations.<sup>8</sup> The equal access and nondiscrimination requirements have a long history, and stem not only from the MFJ, the GTE Consent Decree and Commission rulemaking proceedings, including proceedings creating the access charge regime, but also from case-by-case adjudication in the courts and before the Commission. Any attempt to catalog these requirements runs the risk that some aspect of prior rulings will be overlooked or will be mutated in its codification without any considered evaluation of whether the obligation should be altered or eliminated. Thus, rather than attempting to fashion a comprehensive list of such obligations and determine what changes are appropriate,<sup>9</sup> the Commission should require any carrier that seeks relief to file a petition for rulemaking (or, if appropriate, waiver), demonstrating that such relief is warranted and that relief will not have any anti-competitive consequences.

2. *Costs of Complying with Equal Access and Nondiscrimination Obligations*

The Commission need not be concerned that continuation of existing equal access obligations will impose unreasonable costs on the BOCs or their customers. As the equal access and nondiscrimination obligations have evolved over the last twenty years, any costs associated with such requirements have already been absorbed. Moreover, Sprint notes that the implementation of equal access and nondiscrimination provisions have long

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<sup>8</sup> Cf. NOI at ¶ 11.

<sup>9</sup> Cf. NOI at ¶¶ 11-13.

since become incorporated into the day-to-day business practices of BOCs and IXC alike. Switches, employee training programs, billing systems and other operations have all been designed to meet equal access and nondiscrimination obligations.

3. *Application of Equal Access and Nondiscrimination Obligations to BOC Marketing Practices*

In its NOI,<sup>10</sup> the Commission also asks questions about how the equal access and nondiscrimination obligations should be applied to prevent anti-competitive marketing practices by BOCs.

Sprint agrees that there is compelling reason to fear that BOCs might seek to unfairly market IXC services, absent equal access and nondiscrimination obligations. Moreover, there is substantial record evidence that in previous instances the BOCs have done just that.<sup>11</sup> Sprint believes that the approach taken to date, where the Commission has utilized case-by-case adjudication through the complaint process, continues to be the only practical way to address violations of the equal access and nondiscrimination obligations. As demonstrated by the Commission's experience with these issues thus far, such determinations generally are factually intensive and depend on both the specific terms of the BOC-IXC marketing agreement and the course of conduct by both parties to the agreement. Subtle variations, in either the agreement itself or the parties' conduct, can dictate whether a carrier's marketing strategy may violate the equal access and nondiscrimination obligations. Thus, it is impossible to lay down *ex ante*, specific rules that anticipate all of the possible factual variations.

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<sup>10</sup> NOI at ¶ 14.

## **B. APPLICATION OF OBLIGATIONS TO INDEPENDENT INCUMBENT LECs**

In the NOI, the Commission also asks questions about how equal access and nondiscrimination obligations should be applied to independent incumbent LECs. As Sprint previously has noted, such obligations may serve a useful purpose in many contexts without overly burdening any particular class of carrier. Sprint therefore does not object to the continued application of existing equal access and nondiscrimination requirements to independent incumbent LECs. Sprint notes, however, that the risks to long distance competition from anti-competitive behavior by these types of carriers is significantly less than it is for the BOCs.<sup>12</sup> Given the limited size and scope of most LEC service areas, LECs are unable to disadvantage any particular IXC competitors in the provision of service. In contrast to the BOCs, for example, Sprint's service territories are widely dispersed and largely rural. Sprint -- the largest independent incumbent LEC -- offers local service in 18 states from Florida to Washington, and Sprint's LECs are rural telephone companies, as defined in the Act, in all states except Nevada.<sup>13</sup> This dispersion lessens the potential to affect competition in the long distance market.<sup>14</sup> Moreover, independent incumbent LECs simply do not have the scale to affect the IXC market. Whereas the BOCs command approximately 7/8 of the nation's switched access lines, the

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<sup>11</sup> See, e.g., *AT&T v. Ameritech Corp. et al.*, Memorandum Opinion and Order, 13 FCC Rcd 214382, para. 63 (1998), *aff'd sub nom. US West Communications, Inc. v. FCC*, 177 F.3d 1057 (D.C. Cir. 1999), *cert. denied*, 528 U.S. 1188 (2000).

<sup>12</sup> See Comments of Sprint Corporation, 2000 Biennial Regulatory Review -- Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules (filed Nov. 1, 2001) (explaining how independent incumbent LECs are unable to affect long distance competition in the context of lifting the separate affiliate rules).

<sup>13</sup> See 47 U.S.C. § 153 (37).

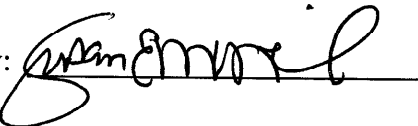
<sup>14</sup> GTE Consent Decree, 603 F. Supp. at 734.

remaining 1,300 carriers operate about 1/8 of the lines.<sup>15</sup> Sprint itself has roughly half the number of access lines of the smallest BOC. The scope of the LECs' local operations is too limited to realistically allow them to thwart competition in the provision of IXC services.

For the reasons set forth above, Sprint respectfully requests that the Commission retain the equal access and nondiscrimination obligations, particularly as imposed on BOCs.

Respectfully submitted,

SPRINT CORPORATION

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May 10, 2002

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<sup>15</sup> Based on USF loops in October 1, 2001 NECA USF Filing, Tab 6.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION** was sent by electronic mail on this the 10<sup>th</sup> day of May, 2002 to the below-listed parties:

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May 10, 2002